

Control Number: 51812



Item Number: 205

Addendum StartPage: 0



May 26, 2021

Mr. Thomas Gleeson, Executive Director
Public Utility Commission of Texas
1701 North Congress Avenue
Austin, Texas 78701

Re: D-1-GN-21-001772; *Exelon Generation Company, LLC, et al. v. Public Utility Commission of Texas et al.*; in the 53rd Judicial District Court of Travis County, Texas

Dear Mr. Gleeson:

I am serving Public Utility Commission of Texas the attached Original Petition in Intervention and Motion to Abate in connection with the above-referenced matter.

Should you have any questions, please do not hesitate to contact my office.

Thank you for your attention to this matter.

Sincerely,

Chrysta Castañeda

**EXELON GENERATION COMPANY,
LLC, and CONSTELLATION
NEWENERGY, INC.,**

and

Intervenors-Plaintiffs,

V.

Defendants.

53rd JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

TO THE HONORABLE JUDGE OF SAID COURT:

DGSP2 LLC, Distributed Generation Solutions LLC, and Aspire Commodities, LLC (collectively, “Intervenor-Plaintiffs”) file this Petition in Intervention as party-plaintiffs and Motion to Abate, and respectfully show the Court as follows:

A. PARTIES AND SERVICE

1.1 Intervenor-Plaintiff DGSP2 LLC (“DGSP2”) is a Texas limited liability company with a principal office in Houston, Texas.

1.2 Intervenor-Plaintiff Distributed Generation Solutions LLC (“DGS”) is a Texas

limited liability company with a principal office in Houston, Texas.

1.3 Intervenor-Plaintiff Aspire Commodities, LLC (“Aspire”) is a Delaware limited liability company.

1.4 Plaintiff Exelon Generation (“Exelon”) is a Pennsylvania limited liability company that sells wholesale energy and energy-related products and services in the Electric Reliability Council of Texas. It has generally appeared in this lawsuit.

1.5 Plaintiff Constellation NewEnergy, Inc. (“Constellation”) is a Delaware Corporation that provides competitive retail supply to residential and commercial/industrial customers. It has generally appeared in this lawsuit.

1.6 Defendant Public Utility Commission of Texas (“Commission”) is an administrative agency of the State of Texas, created and governed by the Public Utility Regulatory Act (“PURA”). Pursuant to 16 Tex. Admin. Code § 22.22, the Commission may be served with process by serving its Executive Director, Mr. Thomas Gleeson, at the Commission’s offices, 1701 North Congress Ave., Austin, Texas 78701.

1.7 Defendant Electric Reliability Council of Texas, Inc. (“ERCOT”) is the independent system operator for the Texas power region, and it is directly responsible and accountable to the Commission. ERCOT is a Texas corporation with its principal place of business in Austin, Texas. ERCOT may be served with process through its registered agent, CT Corporation System, at 1999 Bryan Street, Suite 900, Dallas, TX 75201.

1.8 Defendant Intercontinental Exchange Futures US (“ICE”) is an electronic exchange for commodities and futures. ICE is a Delaware corporation registered to do business and doing business in Texas and may be served with process through its registered agent, United Agent Group Inc., at 5444 Westheimer, Suite 1000, Houston, Texas 77056.

B. JURISDICTION & VENUE

2.1 Pursuant to Tex. Gov't Code §§ 2001.035 and 2001.038(d), this Court has jurisdiction over this action for judicial review of rules adopted or amended by the Commission and/or a declaratory judgment setting aside Commission rules.

2.2 Venue against ERCOT and the Commission lies in Travis County pursuant to Tex. Gov't Code § 2001.038(b). Venue against ICE lies in Travis County because the claims against ICE arise from the same transactions or occurrences as the claims against ERCOT and the Commission. *See* Tex. Civ. Prac. & Rem. Code § 15.005.

2.3 Venue against ICE is also proper under Tex. Civ. Prac. & Rem. Code § 15.003 because Aspire can show that Travis County is a fair and convenient venue and no party to the suit will be unfairly prejudiced if this suit is maintained in Travis County. Aspire's claims against ICE and Plaintiffs' and Intervenor-Plaintiffs' claims against the Commission concern the same issues and questions of law, and an essential need exists for Aspire to litigate its claims against ICE in this suit to avoid inconsistent judgments.

C. DISCOVERY CONTROL PLAN

3.1 To the extent that discovery is needed, Intervenor-Plaintiffs will conduct discovery in accordance with a Level 3 discovery control plan pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

D. BACKGROUND

4.1 On February 15, 2021, ERCOT declared its highest state of emergency, an Energy Emergency Alert-3 ("EEA3"), because electric demand exceeded supply by an exceptional amount. Accordingly, ERCOT directed transmission operators in the ERCOT region to shed more than 10,000 megawatts of firm load.

4.2 On the same day, the Commission entered an emergency order in Project No. 51617, directing ERCOT “to ensure that firm load that was being shed in EEA3 is accounted for in ERCOT’s scarcity pricing signals” and to “**correct any past prices** such that firm load that is being shed in EEA3 is accounted for in ERCOT’s scarcity pricing signals” (“Original Order”). The Original Order specifically directed ERCOT to clear prices at \$9,000/MWh.

4.3 In a second order on February 16, 2021, the Commission made a single change to the Original Order, stating that “the Commission determines that its directive to ERCOT in its order dated February 15 to also correct any past prices to account for load shed in EEA3 should be and is hereby rescinded and directs ERCOT to not correct any such past practices” (“Second Order”).

4.4 The Commission’s revocation of its original instructions to ERCOT was error. The Commission made no finding of a second emergency necessitating the change, as required by law, and the substance of the change is directly contrary to law. Beginning at 1:20 A.M. on February 15, 2021 when the system entered EEA3, energy was incorrectly and illegally priced because ERCOT pricing failed to conform to applicable law and regulations.

4.5 Intervenors DGSP2 and DGS have appealed the Second Order in the Court of Appeals for the Third District of Texas in the case styled *Luminant Energy Co. LLC v. Pub. Util. Comm’n of Tex.*, 03-21-00098-CV (Mar. 2, 2021).

4.6 On February 21, 2021, the Commission issued an order directing ERCOT to exercise its sole discretion to resolve financial obligations between a market participant and ERCOT (“February 21 Order”). To the extent ERCOT is still under direction in Project No. 51812 to consider prices for resources delivered to the ERCOT grid on February 15 **other than the \$9,000/MWh cap** established by the First Order, the February 21 Order is in error. Intervenors DGSP2 and DGS have appealed the February 21 Order in Texas in the case styled *Luminant Energy Co. LLC v. Pub. Util.*

Comm'n of Tex., 03-21-00108-CV (Mar. 8, 2021) (together, with Luminant's March 2 appeal, the "Luminant Appeals").

4.7 Under ERCOT Nodal Protocol Section 9.14.2, the deadline to raise an invoice dispute, a settlement and billing dispute, or to report an exception is 10 business days. However, in an Order issued on March 12, 2021, the Commission granted an exception to the 10-business-day deadline. Specifically, in the March 12 Order, the Commission directed ERCOT to extend the deadline to file a dispute or exception relating to operating days February 14 -19, 2021 to **six months** after ERCOT posts the invoice, settlement statement, or resettlement statement. Accordingly, the time for Intervenor-Appellants to dispute ERCOT's settlement of prices relating to February 15, 2021 has not yet passed.

4.8 Defendant ICE was established in 2000 on the principles of price transparency and market efficiency. It provides an electronic trading platform for standardized over-the-counter (OTC) energy contracts and listings. The ICE OTC energy market provides physically settled bilateral contracts for global crude and North American natural gas and power to satisfy the hedging and trading objectives of a diverse range of market participants.

4.9 Intervenor-Plaintiff Aspire traded electricity futures contracts for February 15 on the ICE exchange in accordance with the contract specifications provided by ICE. True and correct copies of the specifications for such contracts is attached as Exhibit A¹. Among the terms imbedded in the contracts are a) the prices are established based on ERCOT prices and b) will be settled on the ERCOT calendar. *See* Exhibit A.

¹ While the contracts attached as Exhibit A are for contracts dated May 17, 2021, on information and belief the contracts for February 15, 2021 differed only as to contract date.

4.10 The ERCOT calendar for settlement of prices relating to the February 15-19, 2021 deliveries of resources is still open. Accordingly, ICE is required by the terms of its own contracts to leave the settlement of Aspire's February 15, 2021 ERCOT contracts open and to not close the books on those contracts until this Court or the Third Court of Appeals has resolved whether those resources will be priced at \$9000/MWh.

4.11 Despite its clear contractual obligations, ICE refuses to comply with its contracts and keep final settlement open until ERCOT has finally repriced the energy delivered during February 15-19, 2021. Its executives have testified under oath that they refuse to reprice on the calendar provided by ERCOT.

4.12 Aspire has been damaged by the actions of the Commission, ERCOT and by ICE refusing to comply with the terms of its agreements with Aspire.

E. INTERVENOR-PLAINTIFFS' INTEREST

5.1 On April 19, 2021, Plaintiffs filed this lawsuit to challenge the validity of rules promulgated by the Original Order and the Second Order. Intervenor-Plaintiffs likewise dispute the validity of the rule promulgated by the Commission in the Second Order, which was contrary to law.

5.2 Under Rule 60, "Any party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party." Tex. R. Civ. P. 60. To intervene in a cause of action or establish standing, an intervenor is not required to secure the court's permission. An intervenor need only show a justiciable interest in a pending suit to intervene as a matter of right. *In re Union Carbide Corp.*, 273 S.W.3d 152, 155 (Tex. 2008). A party has a justiciable interest when its interests will be affected by the litigation. *Id.*

5.3 The Second Order caused financial harm to DGSP2 and DGS, which were generating and selling electricity during the EEA3 event. As market participants and owners of resources

deployed during the EEA3 event, DGSP2 and DGS are and continue to be directly and negatively affected by the Second Order's erroneous mandate that ERCOT not price resources as required by law. Therefore, intervention is necessary in this case to protect the rights and interests of DGSP2 and DGS.

5.4 The Second Order further caused financial harm to Aspire, which acted in reliance on the prices established by the ERCOT system, which were incorporated by reference into its contracts with ICE. As of the time of the filing of this petition, neither ERCOT nor ICE have properly settled the February 15 contracts using correct prices.

F. CAUSES OF ACTION

1. Against the Commission: Request to Void Second Order.

6.1 Intervenor-Plaintiffs incorporate by reference all previous paragraphs as if fully set forth herein.

6.2 Under the Administrative Procedure Act ("APA"), an agency rule is voidable unless a state agency adopts it in substantial compliance with the APA's procedural rulemaking requirements. Tex. Gov't Code § 2001.035.

6.3 Procedural rulemaking requirements apply to agency statements that implement, interpret or prescribe law or policy, or statements that describe the procedure or practice requirements of an agency, or statements that amend or repeal a prior rule. Tex. Gov't Code § 2001.003(6)(A), (B).

6.4 The APA permits emergency rulemaking without prior notice or hearing if the agency "finds that an imminent peril to the public health, safety, or welfare, or a requirement of state law ...requires adoption of a rule on fewer than 30 days' notice" if the reasons for such finding are set forth in writing in the rule's preamble. Tex. Gov't Code § 2001.034(a), (b).

6.5 The preamble of the Original Order states that it was issued in connection with Governor Abbott’s February 12, 2021 Declaration of Disaster, which directed state governments and agencies to respond to the “imminent threat” of “injury and loss of life due to prolonged freezing temperatures.” The preamble of the Original Order also states:

Further, on February 15, 2021, the Electric Reliability Council of Texas, Inc. (ERCOT) declared its “highest state of emergency, an Emergency Energy Level 3 (EEA3), due to exceptionally high electric demand exceeding supply. ERCOT has directed transmission operators in the ERCOT region to curtail more than 10,000 megawatts (MW) of firm load. The ERCOT System is expected to remain in EEA3, and firm load shed is expected to continue, for a sustained period of time in light of the expected duration of the extreme weather event.

6.6 The Original Order clearly meets the emergency rulemaking requirements of the APA because it substantially complies with the requirements of Tex. Gov’t Code § 2001.034(a) and (b).

6.7 Unlike the Original Order, the Second Order fails to state any new or different findings that would allow rescinding its direction under the Original Order. Rather, the preamble of the Second Order is identical to the Original Order. The same emergency findings that necessitated the correction of past prices on February 15 do not support the revocation of that directive one day later which revocation is flatly contrary to Commission law and ERCOT rules.

6.8 Because the Commission failed to substantially comply with the procedural rulemaking requirements in Tex. Gov’t Code § 2001.034(a) and (b), as to the Second Order, good cause exists for the Court to find that the rules rescinded or adopted by the Second Order are invalid and void. Tex. Gov’t Code § 2001.040.

2. Against the Commission and ERCOT: Declaratory Judgment

6.9 Intervenor-Plaintiffs incorporate by reference all previous paragraphs as if fully set

forth herein.

6.10 DGSP2 and DGS are generators of electricity on the ERCOT grid, market participants, and owners of resources that were deployed during the February 2021 EEA3 event affecting the ERCOT grid. The rules rescinded or adopted by the Commission in the Second Order caused significant financial harm to DGSP2 and DGS and they continue to be directly and negatively affected by the rules.

6.11 The Second Order's revocation of the Original Order's directive to correct past prices and the Second Order's new directive to ERCOT to not correct past prices were arbitrary and capricious because there were no emergency findings for the Second Order other than those that necessitated the Original Order.

6.12 The Second Order deprives DGSP2 and DGS and other similarly situated market participants of due process rights because they had no opportunity to be heard, to provide input, or to mitigate the harm that resulted from the application of the rules rescinded or adopted by the Commission in the Second Order.

6.13 Because the rules rescinded or adopted by the Commission in the Second Order interfere with or impair, or threaten to interfere with or impair, legal rights or privileges belonging to DGSP2 and DGS, the rules in the Second Order should be declared invalid pursuant to Tex. Gov't Code § 2001.038.

3. Against ERCOT and ICE: Declaratory Judgment

6.14 Intervenor-Plaintiffs incorporate by reference all previous paragraphs as if fully set forth herein.

6.15 Pursuant to Tex. Civ. Prac. & Rem. Code § 37.003, Intervenor-Plaintiffs seek a declaration against ERCOT that 16 TAC § 25.505(g)(6)(B) required all resources to be priced at

\$9,000/MWh after the system entered EEA3 on February 15, 2021, as the Commission directed in the First Order.

6.16 Pursuant to Tex. Civ. Prac. & Rem. Code § 37.003, Aspire seeks a declaratory judgment against ICE that any failure to reprice, if the underlying ERCOT prices are corrected, constitutes a breach of ICE's obligations under its contracts with Aspire.

G. CONDITIONS PRECEDENT

7.1 All conditions precedent to Intervenor-Plaintiffs' claims for relief have been performed or have occurred.

H. ATTORNEY FEES

8.1 Intervenor-Plaintiffs are entitled to recover costs and reasonable and necessary attorney fees under Tex. Civ. Prac. & Rem. Code § 37.009.

II. INTERVENOR-PLAINTIFFS' MOTION TO ABATE

9.1 Intervenor-Plaintiffs incorporate by reference all previous paragraphs as if fully set forth herein.

9.2 Subject to and following their Petition in Intervention, Intervenor-Plaintiffs move to abate the instant case pending the outcome of the two related Luminant Appeals pending in the Court of Appeals for the Third District of Texas.

9.3 The Luminant Appeals challenge the validity of rules adopted by the Commission in the Original Order, the Second Order and the February 21 Order pursuant to the direct appeal provisions established by PURA. *See* Tex. Util. Code §§ 39.001(e), (f). DGSP2 and DGS have intervened in the Luminant Appeals.

9.4 Plaintiffs and Intervenor-Plaintiffs agree that the rules adopted by the Commission in the Original Order and the Second Order are competition rules under PURA sections 39.001(e) and

(f).² Under PURA, “Judicial review of the validity of competition rules shall be commenced in the Court of Appeals for the Third District.” Tex. Util. Code §§ 39.001(e).

9.5 The rights and interests of Intervenor-Plaintiffs will be affected by the outcome of the instant case and thus they have intervened in this case to protect those rights and interests and to avoid any potential waiver.

9.6 Because the subject matter of this case and the Luminant Appeals are inherently related because they involve the same subject matter and seek the same relief, this Court should abate pending the determination of the Luminant Appeals. The general rule in Texas is that when two suits are inherently related, the court in which the first-filed suit is pending acquires dominant jurisdiction and a motion to abate the second-filed action must be granted. *In re J.B. Hunt Transp., Inc.*, 492 S.W.3d 287, 294 (Tex. 2016) (orig. proceeding).

9.7 Because the Third Court of Appeals has acquired dominant jurisdiction over the subject matter of Plaintiffs’ and Intervenor-Plaintiffs’ claims, this case should be abated during the pendency of the Luminant Appeals.

III. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Intervenor-Plaintiffs request the following relief:

- i. grant Intervenor-Plaintiff’s Motion to Abate;
- ii. against the Commission, issue a finding that the rules rescinded or adopted by the Second Order are invalid and void pursuant to Tex. Gov’t Code § 2001.040;
- iii. against the Commission and ERCOT, issue a declaration pursuant to Tex. Gov’t Code § 2001.038 in the form specifically described above;
- iv. against ERCOT and ICE, issue a declaration pursuant to Tex. Civ. Prac. & Rem.

² See Motion to Abate filed by Plaintiffs Exelon Generation Company, LLC, and Constellation NewEnergy, Inc. on April 21, 2021 at 2.

Code § 37.003 in the form specifically described above;

- v. attorney fees and costs; and
- vi. any such other and further relief both at law and at equity to which Intervenor-Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,

/s/ Chrysta Castañeda

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**ATTORNEYS FOR INTERVENORS/PLAINTIFFS
DGSP2 LLC, DISTRIBUTED GENERATION
SOLUTIONS LLC, AND ASPIRE COMMODITIES LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record via the Court's ECF system on this 18TH day of May 2021, as follows:

/s/ Chrysta Castañeda

Chrysta L. Castañeda

VERIFICATION OF CHRYSTA CASTAÑEDA

STATE OF TEXAS

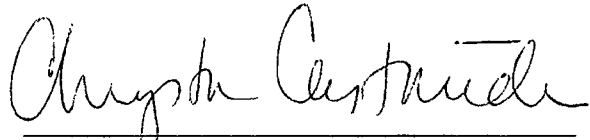
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DALLAS COUNTY

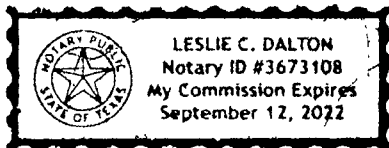
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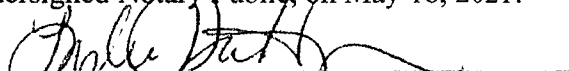
Before me, the undersigned authority, on this day personally appeared Chrysta Castañeda, counsel of record for Intervenor-Plaintiffs DGSP2 LLC, Distributed Generation Solutions LLC, and Aspire Commodities, LLC, who being by me duly sworn, upon her oath stated that she is fully competent and duly authorized to make this verification, that she has read the foregoing Original Petition in Intervention and Motion to Abate, and that the factual statements therein are true and correct according to her personal knowledge.



Chrysta Castañeda

Sworn to and subscribed before me, the undersigned Notary Public, on May 18, 2021.




Notary Public in and for
The State of Texas

My commission expires: 09/12/22

Automated Certificate of eService

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Leslie Dalton on behalf of CHRYSTA CASTANEDA
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Status as of 5/21/2021 8:27 AM CST

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EXHIBIT A



ERCOT North 345KV Real-Time Peak Fixed Price Future

Contract Specifications

Description	A monthly cash settled Exchange Futures Contract based upon the mathematical average of daily prices calculated by averaging the peak hourly electricity prices published by ERCOT for the location specified in Reference Price A.
Contract Symbol	ERN
Settlement Method	Cash settlement
Contract Size	1 MW
Currency	USD
Minimum Price Fluctuation	The price quotation convention shall be One cent (\$0.01) per MWh; minimum price fluctuation may vary by trade type. Please see Table in Resolution 1 to this Chapter 18.
Listing Cycle	Up to 50 consecutive monthly Contract Periods
Last Trading Day	The last Business Day of the Contract Period
Final Settlement	Average of Reference Price A Prices
REFERENCE PRICE A	ELECTRICITY-ERCOT-NORTH 345KV HUB-REAL TIME
a) Ref Price A - Description	"ELECTRICITY-ERCOT-NORTH 345KV HUB-REAL TIME" means that the price for a Pricing Date will be that day's Specified Price per MWh of electricity for delivery on the Delivery Date, stated in U.S. Dollars, published by the ERCOT at http://www.ercot.com/content/cdr/html/real_time_spp

Contract Specifications

b) Ref Price A - Pricing Date	Each Monday through Friday, excluding NERC holidays, that prices are reported for the Delivery Date
c) Ref Price A - Specified Price	Average of SPPs for all hours ending 0700-2200 CPT
d) Ref Price A - Pricing calendar	ERCOT
e) Ref Price A - Delivery Date	Contract Period
Final Payment Date	The sixth Clearing Organization business day following the Last Trading Day



ERCOT North 345KV Day-Ahead Peak Fixed Price Future

Contract Specifications

Description	A monthly cash settled Exchange Futures Contract based upon the mathematical average of daily prices calculated by averaging the peak hourly electricity prices published by ERCOT for the location specified in Reference Price A.
Contract Symbol	EVN
Settlement Method	Cash settlement
Contract Size	1 MW
Currency	USD
Minimum Price Fluctuation	The price quotation convention shall be One cent (\$0.01) per MWh; minimum price fluctuation may vary by trade type. Please see Table in Resolution 1 to this Chapter 18.
Listing Cycle	Up to 50 consecutive monthly Contract Periods
Last Trading Day	The last Business Day of the Contract Period
Final Settlement	Average of Reference Price A Prices
REFERENCE PRICE A	ELECTRICITY-ERCOT-NORTH 345KV HUB-DAY AHEAD
a) Ref Price A - Description	"ELECTRICITY-ERCOT-NORTH 345KV HUB-DAY AHEAD" means that the price for a Pricing Date will be that day's Specified Price per MWh of electricity for delivery on the Delivery Date, stated in U.S. Dollars, published by the ERCOT at http://www.ercot.com/content/cdr/html/dam_spp

Contract Specifications

b) Ref Price A - Pricing Date	Each Monday through Friday, excluding NERC holidays, that prices are reported for the Delivery Date
c) Ref Price A - Specified Price	Average of SPPs for all hours ending 0700-2200 CPT
d) Ref Price A - Pricing calendar	ERCOT
e) Ref Price A - Delivery Date	Contract Period
Final Payment Date	The sixth Clearing Organization business day following the Last Trading Day



ERCOT North 345KV Real-Time Off-Peak Fixed Price Future

Contract Specifications

Description	A monthly cash settled Exchange Futures Contract based upon the mathematical average of daily prices calculated by averaging the off-peak hourly electricity prices published by ERCOT for the location specified in Reference Price A.
Contract Symbol	NEB
Settlement Method	Cash settlement
Contract Size	1 MW
Currency	USD
Minimum Price Fluctuation	The price quotation convention shall be One cent (\$0.01) per MWh; minimum price fluctuation may vary by trade type. Please see Table in Resolution 1 to this Chapter 18.
Listing Cycle	Up to 50 consecutive monthly Contract Periods
Last Trading Day	The last Business Day of the Contract Period
Final Settlement	Average of Reference Price A prices
REFERENCE PRICE A	ELECTRICITY-ERCOT-NORTH 345KV HUB-REAL TIME

Contract Specifications

a) Ref Price A - Description	"ELECTRICITY-ERCOT-NORTH 345KV HUB-REAL TIME" means that the price for a Pricing Date will be that day's Specified Price per MWh of electricity for delivery on the Delivery Date, stated in U.S. Dollars, published by the ERCOT at http://www.ercot.com/content/cdr/html/real_time_spp
b) Ref Price A - Pricing Date	Each day that prices are reported for the Delivery Date
c) Ref Price A - Specified Price	For each Monday through Friday, excluding NERC holidays, the average of SPPs for all hours ending 0100-0600, 2300-2400 CPT; for each Saturday, Sunday, and NERC holiday, the average of SPPs for all hours ending 0100-2400 CPT
d) Ref Price A - Pricing calendar	ERCOT
e) Ref Price A - Delivery Date	Contract Period
Final Payment Date	The sixth Clearing Organization business day following the Last Trading Day



ERCOT North 345KV Day-Ahead Off-Peak Fixed Price Future

Contract Specifications

Description	A monthly cash settled Exchange Futures Contract based upon the mathematical average of daily prices calculated by averaging the off-peak hourly electricity prices published by ERCOT for the location specified in Reference Price A.
Contract Symbol	NEV
Settlement Method	Cash settlement
Contract Size	1 MW
Currency	USD
Minimum Price Fluctuation	The price quotation convention shall be One cent (\$0.01) per MWh; minimum price fluctuation may vary by trade type. Please see Table in Resolution 1 to this Chapter 18.
Listing Cycle	Up to 50 consecutive monthly Contract Periods
Last Trading Day	The last Business Day of the Contract Period
Final Settlement	Average of Reference Price A prices
REFERENCE PRICE A	ELECTRICITY-ERCOT-NORTH 345KV HUB-DAY AHEAD

Contract Specifications

a) Ref Price A - Description	"ELECTRICITY-ERCOT-NORTH 345KV HUB-DAY AHEAD" means that the price for a Pricing Date will be that day's Specified Price per MWh of electricity for delivery on the Delivery Date, stated in U.S. Dollars, published by the ERCOT at http://www.ercot.com/content/cdr/html/dam_spp
b) Ref Price A - Pricing Date	Each day that prices are reported for the Delivery Date
c) Ref Price A - Specified Price	For each Monday through Friday, excluding NERC holidays, the average of SPPs for all hours ending 0100-0600, 2300-2400 CPT; for each Saturday, Sunday, and NERC holiday, the average of SPPs for all hours ending 0100-2400 CPT
d) Ref Price A - Pricing calendar	ERCOT
e) Ref Price A - Delivery Date	Contract Period
Final Payment Date	The sixth Clearing Organization business day following the Last Trading Day



ERCOT North 345KV Real-Time Peak Daily Fixed Price Future

Contract Specifications

Description	A daily cash settled Exchange Futures Contract based upon the mathematical average of peak hourly electricity prices published by ERCOT for the location specified in Reference Price A.
Contract Symbol	END
Settlement Method	Cash settlement
Contract Size	800 MWh
Currency	USD
Minimum Price Fluctuation	The price quotation convention shall be One cent (\$0.01) per MWh; minimum price fluctuation may vary by trade type. Please see Table in Resolution 1 to this Chapter 18.
Listing Cycle	Up to 365 consecutive Daily Contract Periods
Last Trading Day	For Monday through Friday Contract Periods, excluding NERC holidays, if the following calendar day is a Business Day, the Business Day following the Contract Period with a closing time of 11:00pm EPT the night before; If the following calendar day is not a Business Day, the Business Day equal to the Contract Period with a closing time equal to the end of the Trading Session For each Saturday, Sunday, and NERC holiday Contract Period, the last Business Day prior to the Contract Period with a closing time equal to the end of the Trading Session.
Final Settlement	Reference Price A

Contract Specifications

REFERENCE PRICE A	ELECTRICITY-ERCOT-NORTH 345KV HUB-REAL TIME
a) Ref Price A - Description	"ELECTRICITY-ERCOT-NORTH 345KV HUB-REAL TIME" means that the price for a Pricing Date will be that day's Specified Price per MWh of electricity for delivery on the Delivery Date, stated in U.S. Dollars, published by the ERCOT at http://www.ercot.com/content/cdr/html/real_time_spp
b) Ref Price A - Pricing Date	Each day that prices are reported for the Delivery Date
c) Ref Price A - Specified Price	Average of SPPs for all hours ending 0700-2200 CPT
d) Ref Price A - Pricing calendar	ERCOT
e) Ref Price A - Delivery Date	Contract Period
Final Payment Date	The sixth Clearing Organization business day following the Last Trading Day



ERCOT North 345KV Hub Day-Ahead Peak Daily Fixed Price Future

Contract Specifications

Description	A daily cash settled Exchange Futures Contract based upon the mathematical average of peak hourly electricity prices published by ERCOT for the location specified in Reference Price A.
Contract Symbol	NDA
Settlement Method	Cash settlement
Contract Size	16 MWh
Currency	USD
Minimum Price Fluctuation	The price quotation convention shall be One cent (\$0.01) per MWh; minimum price fluctuation may vary by trade type. Please see Table in Resolution 1 to this Chapter 18.
Listing Cycle	Up to 45 consecutive daily Contract Periods
Last Trading Day	The last Business Day prior to the Contract Period
Final Settlement	Reference Price A
REFERENCE PRICE A	ELECTRICITY-ERCOT-NORTH 345KV HUB-DAY AHEAD
a) Ref Price A - Description	"ELECTRICITY-ERCOT-NORTH 345KV HUB-DAY AHEAD" means that the price for a Pricing Date will be that day's Specified Price per MWh of electricity for delivery on the Delivery Date, stated in U.S. Dollars, published by the ERCOT at http://www.ercot.com/content/cdr/html/dam_spp

Contract Specifications

b) Ref Price A - Pricing Date	Each day that prices are reported for the Delivery Date
c) Ref Price A - Specified Price	Average of SPPs for all hours ending 0700-2200 CPT
d) Ref Price A - Pricing calendar	ERCOT
e) Ref Price A - Delivery Date	Contract Period
Final Payment Date	The seventh Clearing Organization business day following the Last Trading Day



ERCOT North 345KV Real-Time Off-Peak Daily Fixed Price Future

Contract Specifications

Description	A daily cash settled Exchange Futures Contract based upon the mathematical average of off-peak hourly electricity prices published by ERCOT for the location specified in Reference Price A.
Contract Symbol	NED
Settlement Method	Cash settlement
Contract Size	50 MWh
Currency	USD
Minimum Price Fluctuation	The price quotation convention shall be One cent (\$0.01) per MWh; minimum price fluctuation may vary by trade type. Please see Table in Resolution 1 to this Chapter 18.
Listing Cycle	Up to 365 consecutive Daily Contract Periods
Last Trading Day	The Business Day prior to the Contract Period
Final Settlement	Reference Price A
REFERENCE PRICE A	ELECTRICITY-ERCOT-NORTH 345KV HUB-REAL TIME
a) Ref Price A - Description	"ELECTRICITY-ERCOT-NORTH 345KV HUB-REAL TIME" means that the price for a Pricing Date will be that day's Specified Price per MWh of electricity for delivery on the Delivery Date, stated in U.S. Dollars, published by the ERCOT at http://www.ercot.com/content/cdr/html/real_time_spp

Contract Specifications

b) Ref Price A - Pricing Date	Each day that prices are reported for the Delivery Date
c) Ref Price A - Specified Price	Average of SPPs for all hours ending 0100-0600, 2300-2400 CPT
d) Ref Price A - Pricing calendar	ERCOT
e) Ref Price A - Delivery Date	Contract Period
Final Payment Date	The sixth Clearing Organization business day following the Last Trading Day



ERCOT North 345KV Hub Real-Time Peak Daily Mini Fixed Price Future

Contract Specifications

Description	A daily cash settled Exchange Futures Contract based upon the mathematical average of peak hourly electricity prices published by ERCOT for the location specified in Reference Price A.
Contract Symbol	ERA
Settlement Method	Cash settlement
Contract Size	16 MWh
Currency	USD
Minimum Price Fluctuation	The price quotation convention shall be one cent (\$0.01) per MWh; minimum price fluctuation may vary by trade type. Please see Table in Resolution 1 to this Chapter 18.
Listing Cycle	Up to 365 consecutive daily Contract Periods, or as otherwise determined by the Exchange
Last Trading Day	For Monday through Friday Contract Periods, excluding NERC holidays, if the following calendar day is a Business Day, the Business Day following the Contract Period with a closing time of 11:00pm EPT the night before; If the following calendar day is not a Business Day, the Business Day equal to the Contract Period with a closing time equal to the end of the Trading Session For each Saturday, Sunday, and NERC holiday Contract Period, the last Business Day prior to the Contract Period with a closing time equal to the end of the Trading Session.

Contract Specifications

Final Settlement	Reference Price A
REFERENCE PRICE A	ELECTRICITY-ERCOT-NORTH 345KV HUB-REAL TIME
a) Ref Price A - Description	"ELECTRICITY-ERCOT-NORTH 345KV HUB REAL TIME" means that the price for a Pricing Date will be that day's Specified Price per MWh of electricity for delivery on the Delivery Date, stated in U.S. Dollars, published by the ERCOT at http://www.ercot.com/content/cdr/html/real_time_spp
b) Ref Price A - Pricing Date	Each day that prices are reported for the Delivery Date
c) Ref Price A - Specified Price	Average of SPPs for all hours ending 0700-2200 CPT
d) Ref Price A - Pricing calendar	ERCOT
e) Ref Price A - Delivery Date	Contract Period
Final Payment Date	The sixth Clearing Organization business day following the Last Trading Day

CITATION
THE STATE OF TEXAS
CAUSE NO. D-1-GN-21-001772

EXELON GENERATION COMPANY, LLC, AND CONSTELLATION NEWENERGY, INC

, Plaintiff

DGSP2 LLC, DISTRIBUTED
GENERATION SOLUTIONS LLC, and ASPIRE COMMODITIES, LLC (INTERVENORS-PLAINTIFFS)

vs

PUBLIC UTILITY COMMISSION OF TEXAS, ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. AND
INTERCONTINENTAL EXCHANGE HOLDINGS, INC d/b/a ICEX, INC

, Defendant

TO: PUBLIC UTILITY COMMISSION OF TEXAS
BY SERVING ITS EXECUTIVE DIRECTOR MR THOMAS J GLEESON
1701 N CONGRESS AVE
AUSTIN, TEXAS 78701

Defendant, in the above styled and numbered cause.

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

Attached is a copy of the ORIGINAL PETITION IN INTERVENTION AND MOTION TO ABATE of the PLAINTIFF in the above styled and numbered cause, which was filed on MAY 21, 2021 in the 53RD JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, May 24, 2021.

REQUESTED BY
CHRYSTA L. CASTANEDA
P. O. BOX 223804
DALLAS, TX 75222
BUSINESS PHONE: (214) 282-8579 FAX:



[Signature]
Valva L. Price
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, TX 78701

PREPARED BY: RODRIGUEZ NANCY

- - - - - R E T U R N - - - - -

Came to hand on the ____ day of _____, _____ at _____ o'clock ____ M, and executed at
_____ within the County of _____ on the ____ day of
_____, _____, at _____ o'clock ____ M,
by delivering to the within named _____, each in person, a true copy of this citation
together with the ORIGINAL PETITION IN INTERVENTION AND MOTION TO ABATE accompanying pleading, having first attached such copy of such
citation to such copy of pleading and endorsed on such copy of citation the date of delivery

Service Fee. \$ _____

Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the

By _____

_____ day of _____, _____

Printed Name of Server

Notary Public, THE STATE OF TEXAS

County, Texas

D-1-GN-21-001772

SERVICE FEE NOT PAID

P01 - 000106989